7388-002-25 REISSUE

IN THE UNITED STATES PATENT & TRADEMARK OFFICE

IN RE REISSUE APPLICATION OF	:
ROBERT R. MILKS	: GROUP ART UNIT: (Anticipated)
FILED: HEREWITH	:
PATENT NO: 5,198,467	: EXAMINER: C. Elmore (Anticipated)
GRANTED: MARCH 30, 1993	:

FOR: INSECTICIDE FOR IMPORTED FIRE ANTS AND OTHER INSECT PESTS

37 CFR 1.175(b) DECLARATION OF
WILLIAM C. MILKS, III

ASSISTANT COMMISSIONER FOR PATENTS
WASHINGTON, D.C. 20231

SIR:

(1) I am a registered patent attorney.

(2) I am the attorney who drafted application S.N. 07/142,525. A continuation-in-part of that application (i.e., application S.N. 07/558,753) matured into the patent now sought to be reissued.

(3) On or about December 01, 1995, during the preparation of the preliminary motions in the interference in which the original patent is involved, we realized that claims 1-11 in the original patent were invalid because they were either anticipated by or unpatentable over the prior art. The reason for this is set forth in the table below.

Language of the Original Claims	Comments as to Patentability
1. A delayed-action insecticide comprising an insecticidal vegetable oil insoluble anionic fluorochemical surfactant, the surfactant being applied in an insecticidal concentration in solution to a carrier in the form of dispersible non-liquid edible food to form a toxic bait.	Claim 1 is anticipated by Vander Meer et al., "Fluoroaliphatic Sulfones: A New Class of Delayed-action Insecticides for Control of Solenopsis Invicta (Hymenoptera: Formicidae)," 78 Journal of Economic Entomology 1190 (1985). A copy of this article is the party Milks's Exhibit 15. Although claim 1 as presented appears to recite a composition, the only element positively recited is an insoluble anionic fluorochemical surfactant. As the Vander Meer et al. article teaches a composition containing an insecticidal vegetable oil insoluble anionic fluorochemical surfactant, that reference anticipates the claim. Claim 1 is also anticipated by sales by 3M of compounds under the trademark "FLUORAD." These compounds are fluorochemical surfactants and thus meet all the requirements of claim 1. A copy of a 3M catalog showing this is the party Milks's Exhibit 13.
2. The delayed-action insecticide of claim 1 wherein the anionic fluorochemical surfactant is a potassium perfluoroalkyl sulfonate having a chemical formula of $C_nF_{2n+1}SO_3K$, where n equals 6 or 8.	Claim 2 is anticipated by the Vander Meer et al. article, which teaches an insecticidal compound of the formula $C_8H_{17}SO_3K$. Claim 2 is also anticipated by sales by 3M of FC-95, which is a trademark for compounds of the formula

	$C_nF_{2n+1}SO_3K$, where n equals 6 or 8. See the party Milks's Exhibit 13.
3. The delayed-action insecticide of claim 1 wherein the anionic fluorochemical surfactant is a potassium perfluoroalkyl cyclohexyl sulfonate having a chemical formula of $C_nF_{2n-1}SO_3K$, where n equals 7 or 8.	Claim 3 is anticipated by sales by 3M of FC-98, which is a trademark for $C_8H_{17}SO_3K$. See the party Milks's Exhibit 13.
4. The delayed-action insecticide of claim 1 wherein the anionic fluorochemical surfactant is dissolved in a solvent which consists of a member selected from the group consisting of acetone and methanol.	Claim 4 does not further limit the scope of claim 1. The intended activity of dissolving the fluorochemical surfactant in a solvent does not further define this element or add a new element.
5. The delayed-action insecticide of claim 1 wherein the carrier consists of a member selected from the group consisting of dried yellow corn meal, corn grit, crushed wheat, and cracked wheat.	Claim 5 does not further limit the scope of claim 1. The intended activity of combining the fluorochemical surfactant does not further define this element or add a new element.
6. The delayed-action insecticide of claim 1 wherein the insecticide further comprises soybean oil subsequently applied to the carrier as an attractant.	Although the fluoro-chemical surfactant is apparently intended to be combined with a carrier, a carrier element is absent from the claims.
7. The delayed-action insecticide of claim 1 wherein the anionic fluorochemical surfactant has a concentration of 0.05 to 1.0% by weight.	Claim 7 is unpatentable over the Vander Meer et al. article as discussed above for claim 1 as no criticality has been shown for the recited range.

8. The delayed-action insecticide of claim 7 wherein the anionic fluorochemical surfactant concentration is approximately 0.1 to 0.5% by weight.	Claim 8 is unpatentable over the Vander Meer et al. article as no criticality has been shown for the recited range.
9. The delayed-action insecticide of claim 6 wherein the anionic fluorochemical surfactant has a concentration of 0.3 to 0.5% by weight, the carrier has a concentration of approximately 9.47 [sic; 94.7] to 94.5% by weight, and the soybean oil has a concentration of approximately 5.0% by weight.	Claim 9 is unpatentable over the Vander Meer et al. article as no criticality has been shown for the recited range. Specifying the concentrations of attractant and carrier does not further limit claim 6, as these are not elements of the claimed composition.
10. The delayed-action insecticide of claim 2 wherein the anionic fluorochemical surfactant has a concentration of 0.05 to 1.0% by weight.	Claim 10 is unpatentable over the Vander Meer et al. article as discussed above for claim 7 as no criticality has been shown for the recited range.
11. The delayed-action insecticide of claim 10 wherein the anionic fluorochemical surfactant concentration is approximately 0.1 to 0.5% by weight.	Claim 11 is unpatentable over the Vander Meer et al. article as no criticality has been shown for the recited range.

(4) The error in claiming the invention more broadly than it should have been arose through an oversight or misunderstanding on my part. It certainly did not arise through deceptive intention on my part! The inventor is my brother, and I was trying to do the best possible job for him.

(5) I declare under penalty of perjury that the foregoing is true and correct.

Date: 12/18/95

William C. Milks, III

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